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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. BILL WAYNE BLAIR, JR., Defendant and Appellant.	B200492 (Los Angeles County Super. Ct. No. YA060320)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sandra Thompson, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey, Janet E. Neeley and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Bill Wayne Blair, Jr. was convicted in 1997 of sex offenses which subjected him to former Penal Code section 290's[1] registration requirements. In 2005, after his release from prison, Blair was charged with two counts of assault in an unrelated matter. As part of a negotiated disposition, he pleaded no contest to an alternative charge of criminal threats and was placed on probation. In 2006, his probation was revoked after he was arrested for failing to register as a sex offender. Blair contends he is entitled to a new probation revocation hearing because the trial court misunderstood the elements of a section 290 violation. Discerning no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Blair's convictions.*

In January 1997, a jury convicted Blair of assault with intent to commit rape (§ 220), sexual battery (§ 243.4, subd. (a)), and attempted forcible rape (§§ 664, 261, subd. (a)(2)). Blair was sentenced to six years in prison.[2] Pursuant to the version of section 290 in effect at the time, and at all relevant times since, Blair was required to register as a sex offender.[3]

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[1] All further undesignated statutory references are to the Penal Code.

[2] The jury also convicted Blair of two counts of false imprisonment. Those convictions were reversed on appeal. The six-year sentence was imposed on remand after the reversal.

[3] The version of section 290 in effect in 1997 provided: "(a)(1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, . . . within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice."

On July 6, 2005, Blair was charged with assault with the intent to commit a variety of sexual offenses, including rape, sodomy, and oral copulation (§ 220), and assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)). Pursuant to a plea agreement, Blair pleaded nolo contendere to a newly added criminal threats charge (§ 422), and the assault charges and various prior conviction allegations were dismissed. The trial court imposed a suspended sentence of three years in state prison and placed Blair on probation for five years. As a condition of his probation, Blair was ordered to "obey all laws and orders of the court." Pursuant to section 296, Blair was ordered to provide buccal swab samples, blood specimens, and palm and thumb prints as a result of the criminal threats conviction.

2. *Probation revocation hearing.*

On November 27, 2006, Blair's probation was preliminarily revoked after he was arrested and charged with failing to register as a sex offender pursuant to section 290. A contested probation revocation hearing was conducted in April 2007, at which Blair represented himself. As relevant here, the following evidence was adduced at the hearing.

On June 28, 1999, while he was incarcerated on the 1997 case, Blair signed a document reflecting he was advised of the sex offender registration requirements. The form bore Blair's signature and thumb print.

On December 1, 1999, Blair was paroled from prison. His parole officer, John Mikle, testified that there was "an issue with [Blair's] registration." Mikle contacted the Department of Justice at some point while Blair was on parole to determine whether Blair was required to register as a sex offender. Mikle was informed Blair was not required to register. Blair's "legal status form," an internal document used by the Department of Corrections, did not indicate Blair was required to register as a sex offender. Blair was discharged from parole on February 9, 2001.

On approximately October 28, 2004, Blair was arrested by the Hawthorne Police Department for failing to register as a sex offender. Someone from the Hawthorne Police Department contacted Mikle regarding Blair's duty to register. On October 29, 2004, Mikle faxed the police department a "CDC 15" form which apparently indicated Blair had no duty to register. Blair was subsequently released from custody. He was not charged with violating section 290.

Shortly thereafter, on November 23, 2004, Blair registered as a sex offender at the Hawthorne Police Department. Officer Claudia Heydinger assisted Blair in completing the registration form. Heydinger observed Blair sign the form. She also observed him read each of a series of advisements on the back of the form, delineating the sex offender registration requirements. Blair initialed each advisement after reading it. Blair read each item slowly, and told Heydinger he wished to take his time. Among the items initialed by Blair were the following. Registration was a lifetime requirement. Blair was required " 'annually within 5 working days of [his] birthday' " to go to " 'the law enforcement agency having jurisdiction over [his] location or place of residence and update [his] registration information,' " including his employer's name and address. Further, Blair was required to register with " 'the law enforcement agency having jurisdiction over [his] residence or location," within five days of changing his address or transient location, or release from incarceration. If he was a transient with no residence address, " 'in addition to the requirement to register annually within five working days' " of his birthday, he was required to update his registration information " 'at least once every 60 days and register a change of transient location within five working days with the law enforcement agency having jurisdiction over' " his location. If he had more than one address, he was required to register each with the agency or agencies having jurisdiction over them. If he had not already provided DNA samples, he was required to submit two specimens of blood, a saliva sample, and thumb and palm prints. It was Blair's " 'duty to know the legal requirements of Penal Code section[s] 290 and 290.01, including changes to the law.' " Heydinger rolled Blair's thumbprint onto the form. A fingerprint expert testified that the fingerprint on the form was Blair's.

After completing the November 23, 2004 registration, Blair never again registered or completed a registration update.

Blair testified in his own behalf. He stated that he had been in custody between "the end of 2004 to December 1, 2005." Immediately upon his release he went "downtown to the Los Angeles County Intake Building" located on Bauchet Street and told a deputy he was there to "register." He told the deputy he was homeless and unemployed. He provided a buccal swab sample and was given a form relating to section 296, governing the collection of blood and buccal swab samples and print impressions. Blair believed that "when I went to 441 Bauchet, that I was registering for any type of registration. If I had to register under [section] 290, that is why I was there to register for [section] 290." When asked during cross-examination whether he knew he had to register as a sex offender pursuant to section 290, Blair replied, "I was unsure but I was following a court order" made by a judge. When asked whether he had signed the June 28, 1999 registration notification document discussed *ante*, he stated that the signature might or might not be his. He explained that he was forced to sign the document in 1999 and was told it "would be determined later" whether registration was necessary. He did not go over the form at that time.

Blair explained that, after he was arrested by the Hawthorne Police in 2004, "the only way that I would be able to be released" was by signing a "notification paper," but he "didn't read really" what was on the document. The "only thing" he understood was that "if I had to register . . . then I would have to do it once a year annually, but it was nothing told to me by any individual about me registering within five days after my birthday . . . ." Blair stated he "did not willfully, knowingly violat[e] Penal Code [section] 290. I was unclear . . . if I was supposed to register or not and I did the best that I could" by going to the Bauchet Street office.[4]

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[4] Blair testified that he had also prepared "a very in depth motion directly asking the court to clarify its position, to which it was never clarified . . . ." The alleged motion was not presented as an exhibit. Its contents were not specifically described at the hearing. Thus, to the extent Blair attempts to argue that the purported motion somehow

During argument to the trial court, Blair asserted, inter alia, that his failure to register was not willful because he was "unclear about it," and even though he was unsure, he tried to comply. He thought he had done everything he was supposed to do by informing persons at the Bauchet building he was there to register. Although Blair's argument was difficult to follow, he appears to have urged that unless an "official in charge of the institution," a "facility captain," or the "judicial . . . branch" informed him of the registration requirement, he could not have been sure he was required to register.

The trial court found the People had established Blair was advised of the registration requirement. The court observed, "when you talk, Mr. Blair, about willfulness, I just looked at the CALJIC requirement for willfulness and the word 'willfully' is defined in the following manner: [¶] The word willfully would apply to the intent with which an act is done or omitted. It means with a purpose or willingness to commit the act or to make the omission in question. The word 'willfully' does not require any intent to violate the law or to injure another or to [ac]quire any advantage and I don't think the definition that you are applying to willfulness is the legal definition that is governing here." The trial court found Blair in violation of his probation and imposed the suspended three-year prison term.[5]

DISCUSSION

Blair asserts that the trial court was "unsure what 'willfully' really means" and mistakenly believed that "the element of willfulness did not require that appellant intentionally fail to register." Because the court applied the wrong standard, he urges, he is entitled to a new probation revocation hearing. We disagree.

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demonstrates he lacked the requisite knowledge or that his failure to register was not willful, we reject the contention.

[5] On the People's motion, the charge of failing to register as a sex offender was dismissed.

A court may revoke probation " 'if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . .' [Citation.]" (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981.) The facts supporting revocation of probation may be proved by a preponderance of the evidence. (*Id.* at p. 982; *People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) Trial courts have great discretion in deciding whether or not to revoke probation. (*People v. Kelly*, *supra*, at p. 965.) " 'Absent abuse of that discretion, an appellate court will not disturb the trial court's findings.' " (*Ibid.*)

The Sex Offender Registration Act, currently codified at sections 290 et seq., at all relevant times herein imposed upon a person who has been convicted of specified sex crimes the duty to register with the applicable local law enforcement agency where he or she is residing within five working days of coming into the city or county or changing his or her residence. (§ 290, subd. (b).) Among other requirements, offenders are required to annually update their registrations within five working days of their birthdays (§ 290.012, subd. (a)), and must register upon release from incarceration (§ 290.015.) Transient sex offenders are subject to similar requirements, including reregistering no less than every 30 days. (§ 290.011.) Blair's convictions for attempted rape, sexual battery, and assault with the intent to commit rape, subjected him to the registration requirement. (§ 290, subds. (b), (c); former § 290, subd. (a).)

To prove a violation of section 290, the People must show both the defendant's actual knowledge of the duty to register and a willful failure to register. (*People v. Barker* (2004) 34 Cal.4th 345, 351; *People v. Garcia* (2001) 25 Cal.4th 744, 751-752; *People v. Sorden* (2005) 36 Cal.4th 65, 68-69.) " 'The word "willfully" implies a "purpose or willingness" to make the omission. [Citation.]' " (*People v. Barker*, *supra*, at p. 351; *People v. Garcia*, *supra*, at p. 752.) One cannot purposefully fail to perform an act without knowing what act is required to be performed. (*People v. Barker*, *supra*, at p. 351; *People v. Garcia*, *supra*, at p. 752.) " '[T]he term "willfully" . . . imports a requirement that "the person knows what he is doing." [Citation.] Consistent with that

requirement, and in appropriate cases, knowledge has been held to be a concomitant of willfulness. . . .' Accordingly, a violation of section 290 requires actual knowledge of the duty to register. A jury may infer knowledge from notice, but notice alone does not necessarily satisfy the willfulness requirement." (*People v. Garcia, supra,* at p. 752.) However, a jury "may infer from proof of notice that the defendant did have actual knowledge, which *would* satisfy the requirement." (*Ibid*.) "While defendant need not intend to violate the law, i.e., he need not know the penal consequences of failing to register, he must have actual knowledge that he is required to register and willfully fail to do so." (*People v. LeCorno* (2003) 109 Cal.App.4th 1058, 1069.) "An omission is neither purposeful nor willing if it is based upon ignorance of the requirements of the law." (*Ibid.*) Thus, the trier of fact must determine that the defendant understood what the statute required of him; if he did not, the knowledge element is lacking. (*Id.* at p. 1070 [court prejudicially erred by instructing the jury that the defendant did not need to know the intermittent nights he spent sleeping in his friend's basement made that location a second residence that he was required to register in addition to his primary residence].) The defendant must know of more than an abstract duty to register; he must know how the law applies to his circumstances. (*Id.* at pp. 1068-1069.)

The willfulness element may be negated by evidence of an involuntary physical or mental condition that deprives a defendant of actual knowledge of his or her duty to register. Only "the most disabling of conditions" qualifies. *(People v. Sorden, supra,* 36 Cal.4th at p. 69.) Simply forgetting about the obligation to register does not negate willfulness. (*People v. Barker, supra,* 34 Cal.4th at pp. 348, 353.)

In *Garcia,* the trial court instructed with CALJIC No. 4.36, which stated: " 'When the evidence shows that the person voluntarily did that which the law declares to be a crime, it is no defense that he did not know that the act was unlawful or that he believed it to be lawful.' " (*People v. Garcia, supra,* 25 Cal.4th at p. 751.) The *Garcia* trial court also instructed with the standard instruction on willfulness, CALJIC No. 1.20, which stated: " 'The word "willfully" when applied to the intent with which an act is done or omitted means with a purpose or willingness . . . to make the omission in question. The

word "willfully" does not require any intent to violate the law . . . .' " (*Ibid.*) *Garcia* concluded that instruction with CALJIC No. 4.36 was error, because the instruction on its face allowed the jury to convict even if the defendant was unaware of his obligation to do so. (*Id.* at p. 754.) The court held CALJIC No. 1.20 "correctly require[d] a showing of purpose or willingness to act, or (as in this case) fail to act." (*Ibid*.) However, CALJIC No. 1.20 was incomplete in that it did not clearly inform the jury actual knowledge was required. (*Ibid.*)

In *Barker,* the court similarly held that it was error to give CALJIC No. 3.30, another " ' "ignorance of the law is no excuse" ' " instruction. (*People v. Barker, supra,* 34 Cal.4th at p. 360.) CALJIC No. 3.30 stated, " '[i]n the crimes charged . . . , there must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.' " (*Id.* at p. 360.) *Barker* concluded that, as with CALJIC No. 4.36, a jury could interpret CALJIC No. 3.30 to mean that a defendant may be guilty of violating section 290 even if unaware of his or her obligation to register. (*Barker,* at p. 361; see also *People v. Edgar* (2002) 104 Cal.App.4th 210, 219.)

In both *Barker* and *Garcia,* the instructional errors were found to be harmless. In *Barker,* the record amply reflected that the defendant was aware of the registration requirement, rendering the error harmless. (*People v. Barker, supra,* 34 Cal.4th at pp. 359, 361.) In *Garcia,* the prosecution presented strong evidence of knowledge. Moreover, under the instructions given, in order to render a guilty verdict the jury had to have found the defendant read and signed a notice of the registration requirement, thereby discrediting his testimony that he had not read the notice. (*People v. Garcia, supra,* 25 Cal.4th at p. 755; see also *People v. Poslof* (2005) 126 Cal.App.4th 92, 100 [finding instruction with CALJIC No. 3.30 harmless].)

Here, although the issue was contested at trial, Blair apparently does not dispute that there was sufficient evidence from which the trial court could have found him in violation of probation. Instead, he contends that the trial court misunderstood the "willfulness" element of a section 290 violation. Blair makes two arguments in support of this contention. First, he points out that the trial court referenced CALJIC No. 1.20 when ruling on the probation violation. Second, he urges that the evidence, viewed as a whole, demonstrated he did not purposefully and intentionally fail to register, implicitly suggesting the trial court must have misconstrued the law in order to find he violated section 290. We are not convinced.

The trial court's reference to CALJIC No. 1.20 does not demonstrate it was unaware of or misconstrued the knowledge or willfulness requirements. The trial court, quoting from CALJIC No. 1.20, observed that the word "willfully," when applied to the intent with which an act is done or omitted, "means *with a purpose or willingness to commit the act or to make the omission in question*. The word 'willfully' does not require any intent to violate the law or to injure another or to [ac]quire any advantage." (Italics added.) As Blair appears to recognize, *People v. Garcia, supra,* 25 Cal.4th 744, did *not* conclude CALJIC No. 1.20 was incorrect in the context of a section 290 prosecution. Instead, the court explained that CALJIC No. 1.20 "*correctly requires* a showing of purpose or willingness to act, or (as in this case) fail to act. But, as we have explained, the instruction was *incomplete* in failing clearly to require actual knowledge of the registration requirement." (*People v. Garcia*, *supra*, 25 Cal.4th at p. 754, italics added.) Thus, the trial court's reliance on CALJIC No. 1.20 was problematic only if the court was unaware of the knowledge requirement.

There is no reason to assume that the trial court was ignorant of the knowledge requirement. To the contrary, during closing argument, the prosecutor argued that Blair had actual knowledge of his duty to register, as evidenced by his completion of the registration notification form in 1999, Officer Heydinger's testimony regarding his completion of the registration form in 2004, and Blair's testimony that he visited the Bauchet Street building to register. When ruling on the probation violation, the trial court

noted, "Counsel has already talked about the knowledge requirement." *People v. Garcia*, *supra,* 25 Cal.4th 744, had been decided approximately six years before the hearing, and the case was cited to the court by Blair. There is, therefore, no reason to believe the trial court was ignorant of the knowledge requirement or misconstrued the willfulness requirement.

Second, the defense evidence was not so overwhelming as to suggest the trial court must have misconstrued the elements in order to find Blair had willfully failed to register. The evidence showed Blair's parole officer was mistaken about Blair's registration requirement *prior to* 2004. However, assuming Blair was misinformed by the parole officer, any confusion he may have had must have been dispelled when he was arrested in 2004 for failing to register, and thereafter informed of the registration requirements. Indeed, according to his testimony, he was only released on the condition he register. He thereafter registered as a sex offender at the Hawthorne Police Department. At that time, he read, signed, initialed, and placed his fingerprint upon a document that fully advised him about the registration requirements, including his duty to keep abreast of the law. Despite his receipt of this information, he failed to update his registration in 2006, within five days of his July 31st birthday. After his purported release from another period of incarceration in December 2005, he failed to update his registration at the relevant law enforcement agency. He admitted that he was unsure at that point whether he was required to register, but went to the Bauchet office because he believed he might have a duty to register. From this evidence, the court could reasonably infer actual knowledge. The court could further conclude that Blair failed to make a genuine attempt to comply with the registration requirement. The court was not obliged to credit Blair's testimony that he believed the visit to the Bauchet building sufficed to fulfill his registration requirement. Aspects of Blair's testimony were unbelievable, undercutting his credibility.[6] Moreover, even assuming arguendo that Blair reasonably

[6] For example, Blair testified that he had been a "wireless engineer" or "computer engineer" for nearly 30 years. Given his date of birth and the date of the hearing, this

and actually believed his visit to the intake office satisfied his registration requirements upon release from incarceration, he offered no evidence justifying his subsequent failure to update his registration within five working days of his birthday in July 2006. Given that there was ample evidence to support the trial court's ruling, we cannot conclude it must have misunderstood the law in order to find Blair violated section 290.[7]

In sum, one of the conditions of Blair's probation was that he obey all laws. The People demonstrated, by a preponderance of the evidence, that Blair failed to comply with his statutorily mandated sex offender registration requirements. The record does not demonstrate the trial court's understanding of the elements was flawed. Accordingly, we conclude Blair is not entitled to a new probation revocation hearing.

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assertion appears highly improbable, in that 30 years earlier Blair would have been approximately 12 years old.

[7] Blair cites *People v. Hagen* (1998) 19 Cal.4th 652, 656 and *People v. Rubalcava* (2000) 23 Cal.4th 322, 331-332, in support of his argument. These cases did not construe section 290, however, and therefore do not assist in resolution of the issue before us. (See *People v. Barker, supra,* 34 Cal.4th at p. 356 ["in interpreting section 290, it is not particularly helpful to resort to case law arising from 'a different statutory scheme addressing a different substantive evil . . .' "].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.